

**BEFORE THE APPEALS `BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PAMELA COOPER

Claimant

VS.

MID-AMERICA DAIRYMEN, INC.

Respondent

AND

HOME INSURANCE COMPANY

Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 177,407

ORDER

Respondent appeals an Order entered by Administrative Law Judge James R. Ward contained in a letter dated July 7, 1995.

ISSUES

Respondent contends that Administrative Law Judge James R. Ward exceeded his authority when he assessed the cost of an independent medical exam against the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In a letter dated July 7, 1995 Administrative Law Judge James R. Ward referred claimant to Brett E. Wallace, M.D., for an independent medical examination pursuant to K.S.A. 44-510e(a). This statute requires an Administrative Law Judge to refer an employee to an independent health care provider when the employer and employee are unable to agree upon the employee's functional impairment. The independent health care

provider is to examine the employee and issue an opinion regarding the employee's functional impairment. The letter also ordered that fees of the independent examining physician's services be assessed to the respondent as costs in the case. Respondent asserts that the Administrative Law Judge exceeded his authority when he assessed the cost of the examination report against the respondent.

The initial issue that the Appeals Board will address in this case is whether the Appeals Board has jurisdiction to review the assessment of the costs by the Administrative Law Judge for an independent medical examination. After reviewing the arguments contained in the Application for Review filed by the respondent, the Appeals Board finds and concludes that it does not have jurisdiction to review this particular matter.

The decision of the Administrative Law Judge to have an independent medical examination performed on the claimant and to assess the cost of this examination to the respondent is interlocutory in nature and made during the litigation of a workers compensation case before the Administrative Law Judge. This is not a final order that can be reviewed pursuant to K.S.A. 44-551, as amended by S.B. 59 (1995). Neither is this an order entered pursuant to the preliminary hearing statute, K.S.A. 44-534a, as preliminary hearing orders are limited to issues of the furnishing of medical treatment and the payment of temporary total disability compensation. The Order now before the Appeals Board pertains to an interlocutory matter, ordering an independent medical examination, over which an Administrative Law Judge has authority to order during the litigation of a workers compensation case.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Application for Review filed by the respondent is dismissed as the Appeals Board lacks jurisdiction to review the Order of Administrative Law Judge James R. Ward which assessed the cost of an independent medical examination to the respondent.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Patrick R. Nichols, Topeka, Kansas
John David Jurcyk, Lenexa, Kansas
Larry G. Karns, Topeka, Kansas
James R. Ward, Administrative Law Judge
Philip S. Harness, Director